UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,294	08/01/2001	Richard Cerami	020366-077410US	5648

			EXAMINER
20350 7590 08/09/2005			JACOBS, LASHONDA T

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ART UNIT	PAPER NUMBER
2157	

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _24 January 2005_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is
closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _1-25_ is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _1-25_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage
application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _4/20/2005_.

4) ☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

This Office Action is in response to Applicants' Amendment and Request for Reconsideration

filed on January 24, 2005. Claims 1-14 are presented for further examination. Applicants newly

added claims 15-25 are presented for examination.

Claim Rejections - 35 USC § 103

1.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in
> section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are
> such that the subject matter as a whole would have been obvious at the time the invention was made to a person
> having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the
> manner in which the invention was made.

2.   Claims 1-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bhagavath et

al (hereinafter, "Bhagavath", 6,374,288) in view of Chiu et al (hereinafter, "Chiu", 6,597,689).

   As per claim 1 and 19, Bhagavath teaches a method and a telecommunications device for

performance managing a service in a video and data network comprising:

- identifying one or more users receiving the service (abstract, col. 3, lines 61-67, col. 6,

  lines 20-31 and col. 8, lines 55-67);

- identifying a physical network (Ethernet) transport in the video and data network for the

  one or more users (col. 7,lines 66-67 and col. 8, lines 1-11);

- monitoring performance data through the physical network transport (col. 9, lines 11-

  31); and

- determining one or more threshold values for one or more users' service (col. 9, lines 23-31).

However, Bhagavath does not explicitly disclose:

- identifying a virtual network transport in the video and data network for the one or more users;

- monitoring performance data through the virtual network transport; and

- determining if the performance data violates at least one or more threshold values.

Chiu discloses a SVC signaling system and method including:

- identifying a virtual network transport in the video and data network for the one or more users (col. 17, lines 12-28);

- monitoring performance data through the virtual network transport (col. 54, lines 36-45 and col. 55, lines 37-50); and

- determining if the performance data violates at least one or more threshold values (col. 59, lines 16-32).

Given the teaching of Chiu, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bhagavath by incorporating a virtual network to send data over a network in order to monitor the status of components and generate an alarm in response to a threshold violation in a timely and efficient manner.

As per claim **14**, Bhagavath teaches a method for performance managing a service in a video and data network providing video and data services, wherein the network comprises a video cloud, data cloud, and video/data cloud comprising:

- identifying one or more users receiving the service (abstract, col. 3, lines 61-67, col. 6,lines 20-31 and col. 8, lines 55-67);

- identifying a physical network (Ethernet) transport for the video cloud, the data cloud and the video/data cloud for the one or more users (col. 7,lines 66-67 and col. 8, lines 1-11);

- monitoring performance data through at least one of the video cloud, data cloud and the video/data cloud the physical network transport (col. 9, lines 11-31); and

- determining one or more threshold values for one or more users' service (col. 9, lines 23-31).

However, Bhagavath does not explicitly disclose:

- identifying a virtual network transport for the video cloud, data cloud and the video/data cloud for the one or more users;

- monitoring performance data through at least one of the video cloud, the data cloud the video/data cloud virtual network transport; and

- determining if the performance data violates at least one or more threshold values.

Chiu discloses a SVC signaling system and method including:

- identifying a virtual network transport for the video cloud, data cloud and the video/data cloud for the one or more users (col. 17, lines 12-28);

- monitoring performance data through at least one of the video cloud, the data cloud the video/data cloud virtual network transport (col. 54, lines 36-45 and col. 55, lines 37-50); and

- determining if the performance data violates at least one or more threshold values (col. 59, lines 16-32).

Given the teaching of Chiu, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bhagavath by incorporating a virtual network to send data over a network in order to monitor the status of components and generate an alarm in response to a threshold violation in a timely and efficient manner.

As per claim **2**, Bhagavath discloses the invention substantially as claims discussed above. However, Bhagavath does not explicitly disclose:

- issuing an alarm if the performance data violates at least one the one or more threshold values.

Chiu discloses a SVC signaling system and method including:

- issuing an alarm if the performance data violates at least one the one or more threshold values (col. 59, lines 16-32).

Given the teaching of Chiu, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bhagavath by generating an alarm when a threshold rate exceeds a predetermine limit in order to fix the network fault in a timely and efficient manner.

As per claim **3**, Bhagavath discloses wherein monitoring the performance data comprises:

- monitoring real-time data (col. 9, lines 23-27).

As per claim **4**, Bhagavath discloses wherein monitoring the performance data comprises:

- monitoring non-real-time data (col. 9, lines 23-27).

As per claim **5**, Bhagavath discloses the invention substantially as claims discussed above.

However, Bhagavath does not explicitly disclose:

- storing the performance data.

Chiu discloses a SVC signaling system and method including:

- storing the performance data (col. 55, lines 21-36).

Given the teaching of Chiu, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bhagavath by generating a report based on the collected status information about the network components in a timely and efficient manner.

As per claim 6, Bhagavath discloses the invention substantially as claims discussed above.

However, Bhagavath does not explicitly disclose:

- creating reports using the stored performance data.

Chiu discloses a SVC signaling system and method including:

- creating reports using the stored performance data (col. 55, lines 21-36).

Given the teaching of Chiu, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bhagavath by generating a report based on the collected status information about the network components in a timely and efficient manner.

As per claim 7, Bhagavath discloses the invention substantially as claims discussed above.

However, Bhagavath does not explicitly disclose:

- issuing an alarm based on the reports.

Chiu discloses a SVC signaling system and method including:

- issuing an alarm based on the reports (col. 59, lines 16-32).

Given the teaching of Chiu, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bhagavath by generating an alarm based on the information within the reports (threshold exceeded, etc) in a timely and efficient manner.

As per claim **8**, Bhagavath discloses the invention substantially as claims discussed above. However, Bhagavath does not explicitly disclose:

- identifying a set of users impacted by the performance data violating the threshold values.

Chiu discloses a SVC signaling system and method including:

- identifying a set of users impacted by the performance data violating the threshold values (col. 59, lines 16-32).

Given the teaching of Chiu, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bhagavath by generating an alarm in response to a threshold violation in a timely and efficient manner.

As per claim **9**, Bhagavath discloses wherein determining the one or more threshold values comprises:

- identifying the a level of service for the one or more users' service (col. 9, lines 23-36); and

- using the level of service in determining the one or more threshold values (col. 9, lines 23-36).

As per claim **10**, Bhagavath discloses:

- wherein the service comprises a Digital Subscriber Line (xDSL) service (col. 1, lines 47-50, col. 5, lines 59-67 and col. 6, lines 1-11).

As per claim **11**, Bhagavath discloses:

- wherein the service comprises a Very high bit rate DSL (VDSL) service (col. 1, lines 47-50 and col. 2, lines 53-61).

As per claim **12**, Bhagavath discloses wherein the video and data network comprises:

- a xDSL network (col. 1, lines 47-50, col. 5, lines 59-67 and col. 6, lines 1-11).

As per claim **13**, Bhagavath discloses wherein the video and data network comprises:

- a VDSL network (col. 1, lines 47-50 and col. 2, lines 53-61).

As per claims **15** and **22**, Bhagavath discloses:

- wherein the physical network transport comprises shared physical network elements and physical network elements specific to the one or more users (col. 7,lines 66-67 and col. 8, lines 1-11).

As per claims **16** and **23**, Bhagavath discloses:

- wherein the shared physical network elements comprise physical network elements shared by the one or more users and users other than the one or more users (col. 7,lines 66-67 and col. 8, lines 1-11).

As per claims **17** and **24**, Bhagavath discloses the claimed invention substantially as claims discussed above.

However, Bhagavath does not explicitly disclose:

- wherein the virtual network transport comprises shared physical network elements and virtual network elements specific to the one or more users.

Chiu discloses a SVC signaling system and method including:

- wherein the virtual network transport comprises shared physical network elements and

  virtual network elements specific to the one or more users (col. 17, lines 12-28);

Given the teaching of Chiu, it would have been obvious to one of ordinary skill in the art at

the time the invention was made to modify Bhagavath by incorporating a virtual network to send

data over a network in order to monitor the status of components and generate an alarm in

response to a threshold violation in a timely and efficient manner.

As per claims **18** and **25**, Bhagavath discloses the claimed invention substantially as claims

discussed above.

However, Bhagavath does not explicitly disclose:

- wherein the shared virtual network elements comprise virtual network elements shared

  by the one or more users and users other than the one or more users.

Chiu discloses a SVC signaling system and method including:

- wherein the shared virtual network elements comprise virtual network elements shared

  by the one or more users and users other than the one or more users (col. 17, lines 12-

  28);

Given the teaching of Chiu, it would have been obvious to one of ordinary skill in the art at

the time the invention was made to modify Bhagavath by incorporating a virtual network to send

data over a network in order to monitor the status of components and generate an alarm in

response to a threshold violation in a timely and efficient manner.

As per claim **20**, Bhagavath discloses the claimed invention substantially as claims

discussed above.

However, Bhagavath does not explicitly disclose:

- logic to issue an alarm if the performance if the performance violates at least one of the one or more threshold values.

Chiu discloses a SVC signaling system and method including:

- logic to issue an alarm if the performance if the performance violates at least one of the one or more threshold values (col. 59, lines 16-32).

Given the teaching of Chiu, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bhagavath by generating an alarm when a threshold rate exceeds a predetermine limit in order to fix the network fault in a timely and efficient manner.

As per claim **21**, Bhagavath discloses the claimed invention substantially as claims discussed above.

However, Bhagavath does not explicitly disclose:

- logic to identify a set of users impacted by the performance data violating the threshold values.

Chiu discloses a SVC signaling system and method including:

- logic to identify a set of users impacted by the performance data violating the threshold values (col. 59, lines 16-32).

Given the teaching of Chiu, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Bhagavath by generating an alarm in response to a threshold violation in a timely and efficient manner.

Response to Arguments

3.   Applicant's arguments with respect to claims **1-25** have been considered but are moot in

view of the new ground(s) of rejection.

Conclusion

4.   The prior art made of record and not relied upon is considered pertinent to applicant's

disclosure.

U.S. Pat. No. 6,160,810 to Brodigan

U.S. Pat. No. 6,208,637 to Eames

U.S. Pat. No. 6,891,825 to O'Dell et al

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to whose telephone number is 571-272-4004. The examiner can

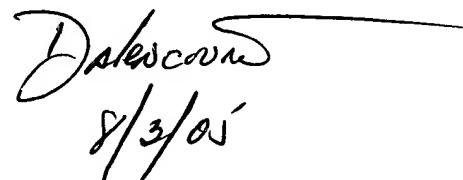normally be reached on 8:30 A.M.-5:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, Ario Etienne can be reached on 571-272-4001. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

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system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

LaShonda T Jacobs
Examiner
Art Unit 2157

ltj
July 29, 2005